IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 24, 2008 Session

IN RE ESTATE OF G. WALLACE CRESWELL

Appeal from the Probate Court for Blount County
No. 04-24-250 William R. Brewer, Jr., Judge

No. E2006-01200-COA-R3-CV - FILED NOVEMBER 25, 2008

At an earlier time in this estate matter, the beneficiaries of the decedent's will announced in open court the terms of a settlement between them. Thereafter, one of the parties to the settlement, James Stewart Creswell ("Mr. Creswell"), sought to repudiate the settlement. The trial court refused to set the settlement aside, but granted an oral motion for an interlocutory appeal. We agreed to hear that appeal. We subsequently affirmed the judgment of the trial court. *See* ***In re Estate of Creswell v. James Stewart Creswell***, 238 S.W.3d 263, 267 (Tenn. Ct. App. 2007). Mr. Creswell applied for permission to appeal to the Supreme Court but his application was denied. On remand, the trial court entered an order closing the estate. Mr. Creswell again appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, SP. J., joined.

James S. Creswell, Harpers Ferry, West Virginia, appellant, Pro Se

W. Phillip Reed, Maryville, Tennessee, for the appellee, Oral Ruth Creswell

OPINION

I

This case concerns the Estate of G. Wallace Creswell, who died testate on June 30, 2004, in Blount County. G. Wallace Creswell was survived by Oral Ruth Creswell ("Mrs. Creswell") and Mr. Creswell, his son by a former wife, who were the beneficiaries of the Estate. The will of G.

Wallace Creswell named Mrs. Creswell as Executrix and specifically provided that "no bond, inventory or any accountings to any Court shall be required" of her.[1]

Following the remand of this matter to the trial court, Mrs. Creswell, as Personal Representative of the Estate, filed a notice of a hearing to close the estate. Mr. Creswell filed a "Motion to Not Close Estate." On January 10, 2008, there was a hearing on the competing pleadings. On January 18, 2008, the trial court entered an order closing the Estate and ordered the distribution of the Estate's assets. Mr. Creswell appeals to this court from the January 18, 2008 order.

II.

Our review is *de novo* upon the record of the proceedings below; however, that record comes to us with a presumption that the trial judge's factual findings are correct. Tenn. R. App. P. 13(d). We must honor this presumption unless we find that the evidence preponderates against those findings. ***Hass v. Knighton***, 676 S.W.2d 554, 555 (Tenn. 1984); Tenn. R. App. P. 13(d). Our review of the trial court's conclusions on matters of law, however, is *de novo* with no presumption of correctness. ***Taylor v. Fezell***, 158 S.W.3d 352, 357 (Tenn. 2005). We likewise review the trial court's application of law to the facts *de novo*, with no presumption of correctness. ***State v. Thacker***, 164 S.W.3d 208, 248 (Tenn. 2005) (citation omitted).

Trial courts, unlike appellate courts, are able to observe witnesses as they testify and to assess their demeanor and other indices of credibility. Thus, trial courts are in a unique position to evaluate witness credibility. *See* ***Bolin v. State***, 405 S.W.2d 768, 771 (Tenn. 1966). Accordingly, appellate courts will not re-evaluate a trial court's assessment of witness credibility absent clear and convincing evidence to the contrary. *See* ***Wells v. Tennessee Bd. of Regents***, 9 S.W.3d 779, 783 (Tenn. 1999); ***Humphrey v. David Witherspoon, Inc.***, 734 S.W.2d 315, 315-16 (Tenn. 1987).

This appeal requires this court to construe a general statutory provision in the public acts and two private acts. The construction of a statute is a question of law. *See* ***Hill v. City of Germantown***, 31 S.W.3d 234, 237 (Tenn. 2000). In this case, the issue, which is one of jurisdiction, was not raised in the trial court. However, a question of subject matter jurisdiction may be raised at any time. ***Arendale v. Arendale***, No. W2005-02755-COA-R3-CV, 2008 WL 481943, at *5 (Tenn. Ct. App. M.S. filed February 22, 2008) (citing ***County of Shelby v. City of Memphis***, 211 Tenn. 410, 413, 365 S.W.2d 291, 292 (Tenn. 1963)). In construing a statute, the court's primary purpose is "to ascertain and give effect to the intention and purpose of the legislature." ***Carson Creek Vacation Resorts, Inc. v. State***, 865 S.W.2d 1, 2 (Tenn. 1993).

[1] Although Mr. Creswell was represented by counsel in his interlocutory appeal to this court, he represented himself when he asked the Supreme Court for further review. He has represented himself since this matter was remanded to the trial court.

III.

Mrs. Creswell's brief states the issues as follows:

> 1. Whether the trial court erred in refusing to allow [Mr. Creswell] to attend the moving of the personal property to the moving company.
>
> 2. Whether the Blount County Probate Court had jurisdiction to handle the Estate.
>
> 3. Whether the trial court erred by closing the Estate without a signed waiver from [Mr. Creswell] pursuant to [Tenn. Code Ann.] § 30-2-601.
>
> 4. Whether the trial court erred by not allowing [Mr. Creswell] to examine W. Phillip Reed, Attorney for Oral Ruth Creswell, Oral Ruth Creswell, and Paulette Gayden, at the hearing conducted on January 10, 2008.
>
> 5. Whether the appeal filed in this cause is frivolous and justifies awarding expenses of suit and attorney's fees under [Tenn. Code Ann.] §27-1-122: damages for frivolous appeal.

IV.

A.

Mr. Creswell argues that the trial court erred in refusing to modify the procedure in the parties' settlement regarding how the personal property of the Estate is to be turned over to him. The agreement affirmed by this court in its earlier opinion is quite specific with respect to the handling of the personal property that is allocated to Mr. Creswell. After listing in detail the items allocated to him, the settlement agreement provides as follows:

> [T]he attorneys for both parties will meet at an agreed time at the house at 1772 Maury Street, Alcoa, Tennessee 37701 with a moving company, to be selected by [Mr. Creswell] and his counsel, and all the items in this Order which are to be the property of [Mr. Creswell] shall be removed from the residence and stored at his expense at a location of his choice. The costs of moving will be charged as an administrative expense against the Estate.

After remand, at the hearing on closing the Estate, Mr. Creswell argued that since Mrs. Creswell had moved from the house and since he was now his own attorney, he should be allowed to be present at the loading of the personal property from the house into the moving van. Among

other things, Mr. Creswell said: "There's a lot of junk in there that I don't want to pay for moving." He also complained that there might be things missing. Mrs. Creswell objected to changing the procedure in the settlement agreement, noting that the whole idea behind the agreement was to resolve the issues between the parties and avoid further contact and dispute between them. As to the issue of the cost of moving, the settlement agreement provides that the Estate is to pay for the move. On the subject of "things missing," Mrs. Creswell pointed out that Mr. Creswell could as easily determine if anything was missing when the items were unloaded for storage as when they were loaded into the moving van from the house.

The trial court rejected Mr. Creswell's request to modify the settlement agreement, saying it was going to follow the direction of this court and enter the order containing the settlement agreement. The trial court then said to Mr. Creswell:

> The Court's going to adopt [the settlement agreement] and make it the order of the court. The Court specifically orders that the quit claim deed be signed. As I understand it, the personal property in the house, by agreement, is all yours. Whether you may call it junk or not, it's yours. . . .
>
> You're going to be required to provide the name of a storage company or some place you want this stuff moved because it's the Court's order for it to be moved, that the mover's expense be paid by the estate, that the other attorney fee previously ordered be paid from the estate and that the cost of the storage, of course, would be charged to you, Mr. Creswell.
>
> I don't see that this Court has anything else that it can do today but to follow the mandate of the Court of Appeals, and the Court so makes an order.

"A judgment or decree of the appellate court is binding on the court below." 5 C.J.S. *Appeal and Error* §1129 (2007). It is also binding on the parties. ***Id.*** On Mr. Creswell's interlocutory appeal, we affirmed the judgment of the trial court that the settlement agreement between the parties was valid. That agreement includes the provision previously set out as to how the personal property of the decedent was to be conveyed to Mr. Creswell.

The rule as to obedience to a mandate requires "an intelligent and reasonable compliance." 5 C.J.S. *Appeal and Error* at §1137. The trial court is, however, given only a limited amount of discretion to comply with the mandate. ***Id.*** Relitigation of matters expressly or implicitly decided is foreclosed. 5 Am. Jur. 2d *Appellate Review* § 740 (2008). Also, "a lower court cannot give any other or further relief beyond the scope of the mandate." ***Id.***

A trial court will not be found to have abused its discretion unless it applied an incorrect legal standard or reached a decision against logic or reasoning that causes an injustice to the party complaining. ***Eldridge v. Eldridge***, 42 S.W.3d 82, 85 (Tenn. 2001). In this case, the trial court

properly complied with this court's mandate in a reasonable manner. The trial court's decision worked no injustice on Mr. Creswell, who was bound by the terms of the settlement agreement. Further, because this court held on interlocutory appeal that the settlement agreement between the parties was enforceable, the trial court did not abuse its discretion in applying the agreement as written and refusing to modify the agreement as requested by Mr. Creswell.

B.

Mr. Creswell argues that the Probate Court for Blount County had no jurisdiction to handle the Estate in this case. That issue was raised and decided some years ago by this court in ***In re Estate of Thompson v. Young***, 952 S.W.2d 429 (Tenn. Ct. App. 1997). In the ***Thompson*** case, this court examined in detail the "checkered past" of probate jurisdiction in Tennessee. ***Id***. at 430. Because the ***Thompson*** case arose in Blount County, we looked specifically at the creation of probate jurisdiction in Blount County. We reviewed public and private acts, and an amendment to our State Constitution, setting out a detailed history of the creation of probate jurisdiction in Blount County. ***Id***. at 430-32. We see no need to repeat that analysis here. In the ***Thompson*** case, we concluded that it was the intent of the legislature to "vest plenary jurisdiction in the Probate Court for Blount County . . . ." ***Id***. at 432.

We reached a similar decision in ***In re Estate of O'Neal***, No. 03A01-9706-CH-00214, 1998 WL 10214 (Tenn. Ct. App. E.S., filed January 14, 1998). In that case, we considered a claim that the Probate Division of the General Sessions Court for Loudon County, which had been created by Private Act, did not have jurisdiction in an estate matter because Tenn. Code Ann. § 16-15-501(d)(1) set out a jurisdictional limit at that time of $10,000. In the ***O'Neal*** case we held that "the statute as to General Sessions Court jurisdiction is silent as to any limitation on probate jurisdiction, and for that reason we conclude the General Sessions Court has plenary jurisdiction in [probate] matters." ***Id.*** at *1. In the case now before us, Mr. Creswell makes an argument identical to the one made by the unsuccessful appellant in ***O'Neal***.

Chapter 202 of the Private Acts of 1965 vests the General Sessions Court of Blount County with "all jurisdiction" in "probate, decedents' estates . . . ." Following a Constitutional Amendment, Chapter 202 of the Private Acts of 1965 was amended by Chapter 60 of the Private Acts of 1987, as follows:

> (b) The court of general sessions of Blount County shall also be vested with all jurisdiction, powers and authority relating to the probate of wills and the administration of estates *as is conferred by law upon probate courts.*

1987 Tenn. Priv. Acts 115 (emphasis added). Thus, the General Sessions Court for Blount County is vested with the authority "as is conferred by law upon probate courts." Probate courts have no limit on the amount in controversy. *See, e.g.*, ***In re Estate of Thompson,*** 952 S.W.2d at 432.

It is a well-settled rule of statutory construction that "[l]egislative intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without a forced

or subtle construction that would limit or extend the meaning of the language." ***Saturn Corp. v. Johnson***, 197 S.W.3d 273, 278 (Tenn. 2006); ***Tuggle v. Allright Parking Sys., Inc***., 922 S.W.2d 105, 107 (Tenn. 1996). It is generally presumed that words are used in their ordinary and common sense. 82 C.J.S. *Statutes* § 310(c) (1999); ***Moskal v. United States***, 498 U.S. 103, 108 (1990) ("In determining the scope of a statute, we look first to its language, giving the words used their ordinary meaning.") (citations and internal quotation marks omitted). Thus, in this case when the legislature used the words "as is conferred by law upon probate courts," we believe that body meant exactly what it said – "as is conferred by law upon probate courts."

In short, by the enactment of Chapter 202 of the Private Acts of 1965, as amended by Chapter 60 of the Private Acts of 1987, it was the intention of the legislature to give the General Sessions Court in Blount County the same authority as all other probate courts. If there had been an intent to limit the jurisdiction – as the general jurisdiction of general sessions courts in this State is limited – we believe the legislature would have expressly so stated. ***In re Estate of O'Neal***, at *1.

Mrs. Creswell argues that the jurisdictional limit applicable to sessions courts generally does not apply to the private act jurisdiction of probate matters, saying that it would make little sense to transfer probate jurisdiction by private act to the General Sessions Court but limit jurisdiction to a sum that would preclude cases involving real estate or other items with a value of $25,000 or more. We agree. A jurisdictional limit of $25,000 could well exclude many cases in the Probate Court for Blount County. In statutory construction, there is a presumption against the conclusion that absurd consequences were intended to result from the enactment of the statute. 82 C.J.S. *Statutes* at § 310(a); ***Anderson v. Security Mills***, 175 Tenn. 197, 207, 133 S.W.2d 478, 482 (Tenn. 1939) (citations omitted). We believe creating a probate court by private act and then limiting that court's monetary jurisdiction would be such an absurd result.

In ***Ware v. Meharry Medical College***, 898 S.W.2d 181, 186 (Tenn. 1995), the Supreme Court held that "cases appealed from the general sessions court to the circuit court pursuant to Tenn. Code Ann. § 16-15-729 should be treated for all purposes as if they originated in the circuit court." The Supreme Court reversed the intermediate appellate court, which had held, in a divided opinion, that the monetary jurisdictional limit on general sessions court jurisdiction applied in circuit court. ***Id.*** Many of the policy reasons that support the Supreme Court's holding in ***Ware*** that the monetary jurisdictional limit in general sessions courts should not apply when a judgment of sessions court is appealed to circuit court also support the position that the monetary jurisdictional limit in general sessions courts should not apply when, by virtue of a private act, a division of general sessions court is exercising probate jurisdiction.

Neither circuit courts not probate courts have monetary jurisdictional limits. In this case, Mr. Creswell does not suggest what court should have jurisdiction over probate matters in excess of $25,000. But if Mr. Creswell's legal position is adopted, there will be at least two courts in Blount County with probate jurisdiction. As the Supreme Court noted in ***Ware***, "The Tennessee Rules of Civil Procedure favor using a single proceeding to resolve all the parties' disputes on the merits." ***Ware***, 898 S.W.2d at 186 (citing ***Karash v. Pigott***, 530 S.W.2d 775, 777 (Tenn. 1975); ***Quelette v. Whittemore***, 627 S.W.2d 681, 682 (Tenn. Ct. App. 1981)).

In ***Ware***, the Supreme Court concluded that "the common-law rule limiting a plaintiff's recovery to the jurisdictional limits of the general sessions court in cases appealed to the circuit court is not compatible with the objectives of the Tennessee Rules of Civil Procedure and modern notions of judicial economy; nor does the rule provide any benefits which offset these deficiencies." ***Id.*** The same can be said of applying the jurisdictional limits of the general sessions court to cases in the Probate Court for Blount County.

In the ***Thompson*** case we found that the Probate Court for Blount County had jurisdiction to handle an estate case involving millions of dollars, including multiple claims: breach of fiduciary duty by falsifying a document sent to the IRS, paying millions of dollars of pledges and debts without authorization in the will, paying taxes to the State that were not owed, failing to timely file a tax return causing a loss of $150,000, failing to detect and pursue legal and accountant malpractice claims, paying executor's commissions and attorneys' fees without court approval, unduly prolonging the estate and committing other acts that were to the detriment of the estate. ***In re Estate of Thompson,*** 952 S.W.2d at 430. We also found that the Probate Court could empanel a jury. ***Id***. at 432. It is thus clear that we have broadly interpreted the jurisdiction of the Probate Court for Blount County.

In this case, we reaffirm that the Probate Court for Blount County has plenary jurisdiction over probate of wills and administration of estates, and we hold that this Probate Court's jurisdiction is not limited, generally, or in this case, to the $25,000 amount set forth in Tenn. Code Ann. § 16-15-501(d)(1). We hold that the Probate Court had jurisdiction to hear this case. Mr. Creswell asserts that certain action of the trial court were nullities. These actions include entering an order adopting the settlement agreement of the parties and closing the estate, as well as an oral instruction that Mr. Creswell execute a quit claim deed agreed to be signed under the settlement agreement of the parties. Mr. Creswell objects that he was forced to sign the quit claim deed under threat of contempt of court. However, since this court rejected Mr. Creswell's attempt to repudiate the settlement agreement, the trial court was properly carrying out the mandate of this court to enforce the settlement agreement, which contained a provision that Mr. Creswell would sign the quit claim deed. We thus hold that the Probate Court's actions, which were deemed nullities by Mr. Creswell, are, in fact, very much valid.

C.

Mr. Creswell argues that the trial court erred in closing the Estate without a signed waiver from him pursuant to Tenn. Code Ann. § 30-2-601(b)(2). That statute calls for a signed waiver reciting "[t]hat the distributees of the residue acknowledge that the estate has been properly distributed to them." In his brief, Mr. Creswell asserts that the quoted provision gives him a "[s]tatutorily mandated right to: (a) identify improper distribution of the estate and (b) any due process devolving from (a)." The statute, however, gives no rights to distributees. And under general probate law the duty is upon the legatee or distributee to execute a receipt for what they receive. Tenn. Code Ann. § 30-2-707 (2001); *see* Jack W. Robinson, Sr., Jeffrey Mobley & Andra J. Hedrick, 2 *Pritchard's on Wills and Administration of Estates* § 821 (6th ed. 2007). Tenn. Code Ann. § 30-2-601(b)(2) simply memorializes the duty of distributees to sign receipts for what is distributed to them so that a personal representative, who is required to account pursuant to the

statute, can do so. The personal representative in this case was not required to account, because the decedent waived accountings in the will.

In responding to Mr. Creswell's statements concerning the necessity of a receipt and other matters, Mr. Reed, the Estate's counsel, said:

> Well, Your Honor, of course, all [Mr. Creswell's] arguments are totally misplaced because we've settled the case and announced it to the Court and it's gone all the way to the Supreme Court who has said, you settled it, you're bound by it. These are all good motions if he had filed them and not settled the case, but once we've settled the case and agree on everything we don't need to do accountings. We don't need to comply with these statutes. If he'd have filed a motion at some point to remove my client as the administrator, these would have all been relevant issues, but that's not what happened. We entered into an agreement when he was represented by Mr. Harrelson. It was announced to the Court. The parties were sworn. Mr. Creswell said he understood the agreement, and then he agreed to it and he wanted the Court to approve it and enforce it, and that's where we are.
>
> Mr. Creswell just continues to try to keep this estate open for no apparent reason. And he's right, we don't have a waiver and receipt from him and [we're] never going to get one. And guess what? You can close estates where people won't agree that they got what they're supposed to get by getting to reach an agreement, announcing it to the Court, and we're going to distribute these things to him. We don't need his waiver and receipt. We won't find an order where Judge Delozier said we had to have a waiver and receipt from Mr. Creswell. So I can't imagine what relevant evidence – I suppose he can call witnesses but I don't believe there's a relevant question he can ask any of these witnesses that's relevant to whether we close this estate or not.

In the section of Mr. Creswell's brief dealing with the fact that the court did not have a receipt from him, he talks about items he supposedly was to receive and did not receive. He also raised that matter in his brief before this court on the interlocutory appeal. The issue of what Mr. Creswell is to receive was resolved when Mr. Creswell signed a settlement agreement that listed the items in detail and this court affirmed the agreement. That issue is *res judicata* and cannot be relitigated. If Mr. Creswell is claiming that since remand there were items that should have been distributed to him that he did not receive, our review of the record does not show that the issue was decided by the trial court. Thus, the issue is not before this court. *See* ***Carroll v. Thomas***, 1988 WL 22833, at *3 (Tenn. Ct. App. W.S., filed March 8,1988) (issue that was not before the trial court cannot properly be presented to appellate court).

D.

Mr. Creswell argues that the trial court erred during the hearing on January 10, 2008, by not allowing him to call the following witnesses: the opposing attorney, Mr. Reed, Mrs. Creswell and Paulette Gayden. The following exchange occurred:

> The Court: Well, I have read your modification. I guess the question I'm going to ask you now, do you want to put on any evidence?
>
> Mr. Creswell: Yes, sir, I would like to examine Mr. Reed. I would like to examine Paulette (Unintelligible), and I would like to examine [Mrs. Creswell].
>
> * * * * *
>
> The Court: Mr. Creswell, can you represent to the Court what evidence you intend to adduce from the examination of each and every witness that you've asked? In light of particularly the Court of Appeals opinion that the judgment previously agreed upon by the parties should be entered.
>
> Mr. Creswell: Well, let me –
>
> The Court: Yes, I'm trying to be as fair as I can to you.
>
> Mr. Creswell: Yes, sir.
>
> The Court: I know you're not a lawyer and I'm –
>
> Mr. Creswell: Yes, sir.
>
> The Court: – trying to give you the benefit of the doubt, of all doubts, but –
>
> Mr. Creswell: Right.
>
> The Court: – I need you to get to the –
>
> Mr. Creswell: Well, I have no objection to answering your question.
>
> The Court: Okay. Go ahead.
>
> Mr. Creswell: What the Appeals Court did was, I guess, affirm Mr. Delozier, Judge Delozier's order. Now, I have certain questions about Judge Delozier's order, for instance, about how it was written,

his own words. And then subsequent to that we had Mr. Reed, I think, ginning up three additional orders that are constantly morphing and changing into something else.

* * * * *

Mr. Creswell: You know, the judge himself said that the basis of the order should be what was said in the agreement on a specific point in time, and that was on the 13th of June or July. And [the] Judge said in the transcript the parties are bound by not my order but they're bound by what's said in that announcement, and an order needs to be fashioned to make that announcement the order of the Court. Okay. Now, what Mr. Reed did was modify and add to the announcement in court.

The Court: What did he add to it?

Mr. Creswell: He added issues like, well, that's also in my – okay. There is a reference to a number of antique clocks that my parents collected out in Australia. The order that day, the agreement that day – what he said in court was [that] I get a collection of clocks. Okay. Subsequent orders modified that and said I get the clocks that were there during our tour that we did about a year after my father died. Now, that's one issue. Another issue is this idea that I have to pay all of the expenses of the estate. That was something added that was not part of the agreement that we made in court and I was bound to. This is something that he ginned up after that in a subsequent revision of the order.

Now, you know, he says that this issue about there being unlawful compliance with the statute that requires the judge to appoint an administrator ad litem, take an inventory, get an accounting. He said that was addressed by the – the Appeals Court. I strenuously object to that characterization. What they examined in that area was whether there was a mutual – a mistake of fact, and they claim that since both parties knew what was happening there wasn't a mutual mistake. That's a far cry from this issue being placed clearly before the Appeals Court as to whether there was an unlawful act on the part of the judge in not appointing an administrator ad litem. And in addition, Mr. Reed, an officer of the court, did not encourage the judge to appoint that administrator ad litem or conform to the will of the legislator that is enlightened in that statute but, rather, contrived with the opposing attorney to not do that.

The Court: Anything else, Mr. Creswell?

Mr. Creswell: I think that that's –

The Court: All right. You can have a seat.

The trial court next listened to arguments from counsel for the Estate and then again from Mr. Creswell. The trial court then announced, "I don't see that this Court has anything else that it can do today but to follow the mandate of the Court of Appeals."

Mr. Creswell did not directly answer the trial court's question: "[C]an you represent to the court what evidence you intend to adduce from the examination of each and every witness that you've asked?" Mr. Creswell talked generally about Mr. Reed, but the issues he mentioned were matters (such as an inventory, an accounting, appointment of a guardian ad litem) that could have been raised if the Estate had not been settled. But the Estate was settled, and the judgment to that effect has been affirmed by this court. ***In re Estate of Creswell,*** 238 S.W.3d at 267.

The trial court is afforded wide discretion in admitting or rejecting evidence. A trial court's decision in this regard is overturned on appeal only if there is an abuse of discretion. ***Bronson v. Umphries***, 138 S.W.3d 844, 851 (Tenn. Ct. App. 2003). *See* ***Otis v. Cambridge Mut. Fire Ins. Co.***, 850 S.W.2d 439, 442 (Tenn. 1992). After listening to Mr. Creswell's arguments concerning what evidence he wanted the court to hear from the Estate's attorney, the trial court did not abuse its discretion in refusing to allow Mr. Creswell to examine opposing counsel.

After examining the record, we do not find a statement by Mr. Creswell responding to the court's question concerning what evidence he intended to produce through Paulette Gayden or Mrs. Creswell. On this appeal, it is suggested by the Estate that their testimony would have addressed the issue of items alleged by Mr. Creswell to have been produced late or to have been allegedly "in Georgia" at some time. This issue, like the issues concerning an inventory, the appointment of a guardian ad litem, and an accounting are issues Mr. Creswell could have raised had he not settled the case. The issue before the trial court on January 10, 2008, was how to comply with the mandate of the court and close the Estate. The issues Mr. Creswell proposed to raise were decided by this court or rendered moot by this court's decision in the interlocutory appeal and thus were not relevant to the inquiry whether to close the Estate. S*ee*, *e.g.,* ***In re Estate of Creswell***, 238 S.W.3d at 267-69 (discussion of allegedly missing items). We hold that the trial court did not abuse its discretion in refusing to allow Mr. Creswell to examine three witnesses on issues that either had been decided, rendered moot or were not relevant to whether to close the Estate.

E.

Mrs. Creswell argues that she should be awarded damages for Mr. Creswell's filing of a frivolous appeal. We note that the decedent died on June 30, 2004. In addition, on July 13, 2005, there was an announcement of record that all matters in the Estate had been settled. It is clear that the closing of this Estate has been delayed, as Mrs. Creswell notes; but, unfortunately, the closing of estates is often delayed. In our discretion, we hold that because the appeal raises a non-frivolous

question of subject matter jurisdiction, this appeal is not frivolous and no fees shall be awarded to Mrs. Creswell.

V.

We affirm the judgment of the trial court and remand this case for enforcement of the trial court's January 18, 2008, order and for collection of costs assessed below, all pursuant to applicable law. The costs of this appeal are taxed to James S. Creswell.

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CHARLES D. SUSANO, JR., JUDGE